IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4638 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed to see the judgment? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

POPAT JAKSHIBHAI DEVIPUJAK

Versus

STATE OF GUJARAT

Appearance:

MS SUBHADRA G PATEL for the Petitioner.

Mr.A.Y. Kogje, Assistant GOVERNMENT PLEADER, for Respondent No. 1-3

RULE SERVED for Respondent No. 1-2

CORAM : HON'BLE MR.JUSTICE P.B.MAJMUDAR

Date of decision: 19/08/2004

ORAL JUDGEMENT

By filing this petition, the petitioner has challenged his detention order dated 10.3.2004, by which he is detained as a 'bootlegger' under the provisions of

the Gujarat Prevention of Anti-social Activities Act, 1985 ("PASA", for short). Along with the detention order, the petitioner is also served with the grounds of detention. In the aforesaid grounds, there is a reference about five criminal cases, which are pending against the petitioner. The aforesaid cases are registered against the petitioner under the Bombay Prohibition Act. It is alleged that the petitioner is dealing in country liquor. After considering the said cases and after recording the statements of two witnesses, whose names have not been disclosed to the petitioner, the Authority has detained him under PASA. It is the aforesaid order which is impugned in this petition.

It is argued by the learned Advocate for the petitioner that there is a delay in deciding the representation. The petitioner made a representation on 22nd March, 2004 to the Detaining Authority and the State Government has decided the same on 31st March, 2004. It is alleged that there is a delay on the part of the State Government in deciding the representation.

Mr.A.Y. Kogje, learned AGP, submitted that the detaining authority has received the said representation on 24th March, 2004 and it was forwarded to the State Government on the same day and the State Government received the same on 25th March, 2004. He submitted that the State Government decided the said representation on 31st March, 2004. He submitted that, in between, there were two holidays, but, even as per the say of Mr.Kogje, at least the representation was not attended on 26th March, 2004, which was a working day and, ultimately, it was decided on 31st March, 2004. In my view, therefore, the delay is not properly explained for not taking decision on the representation immediately. It is a well-settled law that the representation of the detenu is required to be decided forthwith unless the authorities were precluded from taking decision promptly in view of genuine and bona fide reasons. This petition is required to be allowed on the short ground of delay in deciding the representation.

The petition is accordingly allowed. The order of detention is quashed and set aside. It is ordered that the detenu be released forthwith unless he is required in connection with any other case. The Rule is made absolute accordingly.

At this stage, learned Advocate for the petitioner submitted that the petitioner will not enter

Rajkot City upto 30th November, 2004. This statement is recorded. It is for the Police Authority to monitor the same.

(P.B. Majmudar, J.)

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(apj)